UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SHERRI R. CARTER
District Court Executive and
Clerk of Court

WESTERN DIVISION
312 North Spring Street, Room G-8
Los Angeles, CA 90012
Tel: (213) 894-3535

SOUTHERN DIVISION
411 West Fourth Street, Suite 1053
Santa Ana, CA 92701-4516
(714) 338-4750

EASTERN DIVISION
3470 Twelfth Street, Room 134
Riverside, CA 92501
(951) 328-4450

FILED
MAR - 3 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY ___ DEPUTY

February 29, 2008

Clerk, United States District Court
Southern District of California
880 Front Street, Suite 4290
San Diego, CA 92101-8900

'08 CV 0406 BEN AJB

2254 ✓ 1983 ___
FILING FEE PAID Yes ___ No ✓
IFP MOTION FILED Yes ___ No ✓
COPIES SENT TO Court ✓ ProSe ___

Re: Transfer of our Civil Case No. CV 08-00210 JFW (E)

Case Title: Edward Reynir Sullivan v. Matthew Martell, Warden

Dear Sir/Madam:

An order having been made transferring the above-numbered case to your district, we are transmitting herewith our entire original file in the action, together with certified copies of the order and the docket. Please acknowledge receipt of same and indicate below the case number you have assigned to this matter on the enclosed copy of this letter and return it to our office. Thank you for your cooperation.

Very truly yours,

Clerk, U.S. District Court

By Patricia Clarke
Deputy Clerk
(213) 894-2772

cc: All counsel of record

TO BE COMPLETED BY RECEIVING DISTRICT

Receipt is acknowledged of the documents described herein and we have assigned this matter case number CV: ______________________.

Clerk, U.S. District Court

By ______________________
Deputy Clerk

I hereby attest and certify on 2-28-08 that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
Patricia Clarke
DEPUTY CLERK

SEAL OF THE U.S. DISTRICT COURT CENTRAL DIST. OF CALIFORNIA
1177

FILED
CLERK, U.S. DISTRICT COURT
FEB 28 2008
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EDWARD REYNIR SULLIVAN, Plaintiff, v. MATTHEW MARTELL, Warden, Defendant.	NO. CV 08-210-JFW(E) ORDER TRANSFERRING ACTION TO UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

On January 7, 2008, Petitioner filed a "Petition for Writ of Habeas Corpus by a Person in State Custody." On February 8, 2008, Respondent filed a "Motion to Transfer, etc." On February 21, 2008, Petitioner filed a "Notice of Objection to Request for Transfer By Respondent." For the reasons discussed herein, Respondent's motion is granted.

Petitioner currently is in custody within the Central District of California, but challenges a conviction in the Santa Diego County Superior Court, a court located within the Southern District of California. The policy of the federal courts in California is to transfer to the district of conviction all section 2254 petitions that challenge convictions. Thus, transfer to the Southern District of California is appropriate. See Bell v. Watkins, 692 F.2d 999, 1013 (5th Cir. 1982), cert. denied, 464 U.S. 843 (1983) (district court properly transferred habeas petition to district of conviction because, *inter alia*, district of conviction "was the more convenient forum because of the accessibility of evidence"); see also 28 U.S.C. § 2241(d) (section 2254 petitions may be filed in the district of conviction or in the district of confinement, but the district court "in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination"); 28 U.S.C. § 1404(a) (any civil action may be transferred to any other district where the action might have been brought "[f]or the convenience of parties and witnesses, in the interest of justice"); cf. L.R. 83-17.5 (codifying for death penalty cases the policy of the Central District of California "that a petition should be heard in the district in which petitioner was convicted, rather than in the district of petitioner's present confinement").

IT IS THEREFORE ORDERED that this action is hereby transferred to the United States District Court for the Southern District of California, at San Diego, California, and that the Clerk of this Court shall effect such transfer.

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IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order upon Petitioner and counsel for Respondent.

DATED: 2/24, 2008.

JOHN F. WALTER
UNITED STATES DISTRICT JUDGE

PRESENTED this 25th day of February, 2008, by:

CHARLES F. EICK
UNITED STATED MAGISTRATE JUDGE

194, CLOSED

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
(Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:08-cv-00210-JFW-E

Edward Reynir Sullivan v. Matthew Martell
Assigned to: Judge John F. Walter
Referred to: Magistrate Judge Charles F. Eick
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 01/14/2008
Date Terminated: 02/28/2008
Jury Demand: None
Nature of Suit: 530 Habeas Corpus (General)
Jurisdiction: Federal Question

Petitioner

Edward Reynir Sullivan

represented by **Edward Reynir Sullivan**
CDC K-32127
P O Box 3535
Norco, CA 92860-0991
PRO SE

V.

Respondent

Matthew Martell
Warden

represented by **Matthew C Mulford**
CAAG Office of Attorney General of California
110 West A St, Ste 1100
P O Box 85266
San Diego, CA 92186-5266
619-645-2011
Email: docketingsdawt@doj.ca.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

I hereby attest and certify on 2-29-08 that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
Patricia Clark
DEPUTY CLERK

SEAL OF THE U.S. DISTRICT COURT CENTRAL DIST. OF CALIFORNIA

1177

Date Filed	#	Docket Text
01/14/2008	1	PETITION for Writ of Habeas Corpus by a Person In State Custody (28:2254) Case assigned to Judge John F. Walter and referred to Magistrate Judge Charles F. Eick. (Filing fee $ 5 FEE DUE.), filed by petitioner Edward Reynir Sullivan. (Attachments: # 1 Letter CV-17 Letter re Filing H/C Petiton or 28/2255 Motion)(ghap) (Entered: 01/16/2008)
01/14/2008	2	NOTICE OF REFERENCE TO A U.S. MAGISTRATE JUDGE. Pursuant to the provisions of the Local Rules, the within action has been assigned to the calendar of Judge John F. Walter and referred to

		Magistrate Judge Charles F. Eick to consider preliminary matters and conduct all further matters as appropriate. The Court must be notified within 15 days of any change of address. (ghap) (Entered: 01/16/2008)
01/16/2008	3	ORDER REQUIRING ANSWER TO PETITION for Writ of Habeas Corpus by Judge Charles F. Eick: IT IS HEREBY ORDERED that Respondent file an Answer to the Petition within 23 days of the date of this Order. IT IS FURTHER ORDERED that, if Petitioner desires to file a Reply to the Answer, Petition shall do so within 15 days of the date that the Answer is filed. (See document for further details.) (pcl) (Entered: 01/16/2008)
01/16/2008	4	ORDER by Judge Charles F. Eick: IT IS ORDERED that Petitioner shall serve upon Respondent or, if appearance has been entered by counsel, upon Respondent's attorneys, a copy of every future pleading or other document submitted for consideration by the Court. (See document for further details.) (pcl) (Entered: 01/16/2008)
02/08/2008	5	NOTICE OF MOTION AND MOTION for Leave of Matthew Mulford to Appear for Notice of Appearance *Notice of Motion and Motion to Transfer Peitition* filed by Respondent Matthew Martell. (Mulford, Matthew) (Entered: 02/08/2008)
02/08/2008	6	NOTICE OF MOTION AND MOTION to Transfer Case to Southern District of California *Notice of Motion and Motion to Transfer* filed by Respondent Matthew Martell. (Mulford, Matthew) (Entered: 02/08/2008)
02/08/2008	7	MEMORANDUM in Support of MOTION to Transfer Case to Southern District of California *Notice of Motion and Motion to Transfer*6 *Memorandum of Points and Authorities in Support* filed by Respondent Matthew Martell. (Mulford, Matthew) (Entered: 02/08/2008)
02/08/2008	8	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents. The following deficiency was found with your electronically filed document entitled: Notice of Appearance, 5, filed on 2/8/2008. Errors with document: Incorrect document is attached to the docket entry; Incorrect event selected. Correct event is Appearance; Correct category is Notice. The docket entry is Notice of Motion and Motion for Leave to Appear; however, the document attached is NOTICE OF APPEARANCE. (pcl) (Entered: 02/08/2008)
02/11/2008	9	NOTICE of Appearance filed by attorney Matthew C Mulford on behalf of Respondent Matthew Martell (Mulford, Matthew) (Entered: 02/11/2008)
02/11/2008		FAX number for Deputy Attorney General Matthew C Mulford is 619-645-2271. (pcl) (Entered: 02/11/2008)
02/12/2008	10	MINUTES OF IN CHAMBERS ORDER held before Judge Charles F. Eick. On 2/8/08, Respondent filed a "Motion to Transfer Petition for Writ of Habeas Corpus Due to Improper Venue". Petitioner shall have leave to file a Response to the Motion within 20 days of the date of this order. Thereafter, the Court will take the matter under submission. (sp)

		(Entered: 02/12/2008)
02/21/2008	11	OBJECTION to Request for Transfer by Respondent filed by Petitioner Edward Reynir Sullivan. (sp) (Entered: 02/22/2008)
02/28/2008	12	ORDER TRANSFERRING ACTION to United States District Court for the Southern District of California by Judge John F. Walter: IT IS THEREFORE ORDERED that this action is hereby transferred to the United States District Court for the Southern District of California, at San Diego, California, and that the Clerk of this Court shall effect such transfer. (See document for further details.) (MD JS-6. Case Terminated.) (Attachments: # 1 Transmittal Letter CV22) (pcl) (Entered: 02/29/2008)

PACER Service Center

Transaction Receipt

02/29/2008 11:57:28

PACER Login:	us3877	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	2:08-cv-00210-JFW-E
Billable Pages:	2	**Cost:**	0.16

Edward Reynir Sullivan
NAME
K32127 308-25L
PRISON IDENTIFICATION/BOOKING NO.
Post Office Box 3535(CRC-Norco)
ADDRESS OR PLACE OF CONFINEMENT
Norco, CA 92860-0991

Note: It is your responsibility to notify the Clerk of Court in writing of any change of address. If represented by an attorney, provide his name, address, telephone and facsimile numbers, and e-mail address.

FILED
CLERK, U.S. DISTRICT COURT
JAN 14 2008
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY
8:56

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EDWARD REYNIR SULLIVAN
FULL NAME (*Include name under which you were convicted*)
Petitioner,

v.

530

MATTHEW MARTELL, Warden
NAME OF WARDEN, SUPERINTENDENT, JAILOR OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER
Respondent.

CASE NUMBER:
CV CV08-00210 JFW(E)
To be supplied by the Clerk of the United States District Court

☐ ______________ AMENDED

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY
28 U.S.C. § 2254

PLACE/COUNTY OF CONVICTION San Diego County
PREVIOUSLY FILED, RELATED CASES IN THIS DISTRICT COURT
(*List by case number*)
CV ______________
CV ______________

INSTRUCTIONS - PLEASE READ CAREFULLY

1. To use this form, you must be a person who either is currently serving a sentence under a judgment against you in a California state court, or will be serving a sentence in the future under a judgment against you in a California state court. You are asking for relief from the conviction and/or the sentence. This form is your petition for relief.
2. In this petition, you may challenge the judgment entered by only one California state court. If you want to challenge the judgment entered by a different California state court, you must file a separate petition.
3. Make sure the form is typed or neatly handwritten. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. Answer all the questions. You do not need to cite case law, but you do need to state the federal legal theory and operative facts in support of each ground. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a legal brief or arguments, you may attach a separate memorandum.
5. You must include in this petition all the grounds for relief from the conviction and/or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
5. You must pay a fee of $5.00. If the fee is paid, your petition will be filed. If you cannot afford the fee, you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out and sign the declaration of the last two pages of the form. Also, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account at the institution. If your prison account exceeds $25.00, you must pay the filing fee.
6. When you have completed the form, send the original and two copies to the following address:

Clerk of the United States District Court for the Central District of California
United States Courthouse
ATTN: Intake/Docket Section
312 North Spring Street
Los Angeles, California 90012

LODGED
CLERK, U.S. DISTRICT COURT
JAN 11 2008
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

PLEASE COMPLETE THE FOLLOWING: (*Check appropriate number*)

This petition concerns:
1. ☒ a conviction and/or sentence.
2. ☐ prison discipline.
3. ☐ a parole problem.
4. ☐ other.

PETITION

1. Venue
   a. Place of detention California Department of Corrections / California Rehabilitation Center
   b. Place of conviction and sentence Superior Court / County of San Diego / State of California

2. Conviction on which the petition is based *(a separate petition must be filed for each conviction being attacked).*
   a. Nature of offenses involved *(include all counts)*: Strong Arm Robbery / Burglary / Receiving Stolen Property / Enhancement for Offense Committed while Released on Bail / Prison Prior Enhancement.
   b. Penal or other code section or sections: California Penal Codes §211 / §459 / §496 / §12022.1 §667(a)
   c. Case number: SCD117298
   d. Date of conviction: October 10, 1996
   e. Date of sentence: October 10, 1996
   f. Length of sentence on each count: Fours years doubled to eight years on base term, plus two years for 12022.1 enhancement; and five years for prior prison terms for a total of 15 years.
   g. Plea *(check one)*:
      ☐ Not guilty
      ☒ Guilty
      ☐ Nolo contendere
   h. Kind of trial *(check one)*:
      ☐ Jury
      ☐ Judge only

3. Did you appeal to the California Court of Appeal from the judgment of conviction? ☒ Yes ☐ No
   If so, give the following information for your appeal *(and attach a copy of the Court of Appeal decision if available)*:
   a. Case number: ______
   b. Grounds raised *(list each)*:
      (1) Sentence exceeds statutory maximum (absence a finding by jury) regardless to plea

(2) Sentencing Judge exceeded authority in imposing enhancements

(3) Plea bargain can not be binding if all relevants information is not provided

(4) ______

(5) ______

(6) ______

c. Date of decision: ______

d. Result Petition DENIED, without Hearing.

4. If you did appeal, did you also file a Petition for Review with the California Supreme Court of the Court of Appeal decision? ☒ Yes ☐ No

If so give the following information *(and attach copies of the Petition for Review and the Supreme Court ruling if available)*:

a. Case number: ______

b. Grounds raised *(list each)*:

(1) Sentence exceeds statutory maximum regardless to plea bargain

(2) Sentencing Judge exceeded authority in imposing enhancements

(3) Plea bargain can not be binding if all relevant information is not provided

(4) ______

(5) ______

(6) ______

c. Date of decision: October 15, 2007

d. Result Petition DENIED; also without Hearing.

5. If you did not appeal:

a. State your reasons ______

b. Did you seek permission to file a late appeal? ☐ Yes ☐ No

6. Have you previously filed any habeas petitions in any state court with respect to this judgment of conviction?

☒ Yes ☐ No

If so, give the following information for each such petition *(use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available)*:

a. (1) Name of court: San Diego County Superior Court

(2) Case number: Unknown

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: Unknown

(4) Grounds raised *(list each)*:

(a) Illegal sentence.

(b)

(c)

(d)

(e)

(f)

(5) Date of decision: Unknown

(6) Result Petition DENIED without Hearing.

(7) Was an evidentiary hearing held? ☐ Yes ☒ No

b. (1) Name of court:

(2) Case number:

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*:

(4) Grounds raised *(list each)*:

(a)

(b)

(c)

(d)

(e)

(f)

(5) Date of decision:

(6) Result

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

c. (1) Name of court:

(2) Case number:

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*:

(4) Grounds raised *(list each)*:

(a)

(b)

(c) ______

(d) ______

(e) ______

(f) ______

(5) Date of decision: ______

(6) Result ______

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

7. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than five grounds. Summarize briefly the facts supporting each ground. For example, if you are claiming ineffective assistance of counsel, you must state facts specifically setting forth what your attorney did or failed to do.

CAUTION: *Exhaustion Requirement*: In order to proceed in federal court, you must ordinarily first exhaust your state court remedies with respect to each ground on which you are requesting relief from the federal court. This means that, prior to seeking relief from the federal court, you first must present all of your grounds to the California Supreme Court.

a. Ground one: Sentence exceed statutory maximum that could be lawful imposed regardless to plea.

(1) Supporting FACTS: Petitioner contends that except for a prison prior conviction, ANY fact that INCREASES the penalty for a crime beyond the prescibed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt in order to satisfy petitioner's Constitutional right under Sixth & Fourteenth Amendments. Petitioner contends that this is not removed simply because he entered into a plea agreement.

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☒ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☒ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☒ Yes ☐ No

b. Ground two: Sentencing Judge exceeded his authority in imposing an enhancement not tied to a prison prior or not a prison prior itself

(1) Supporting FACTS: Petitioner sontends that the sentencing judge had no lawful jurisdiction to impose an additional term of imprisonment (PC §12022.1) and the U.S. Supreme Court has already stated in rulings that "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt." Apprendi v. New Jersey 530 U.S. 466.

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☒ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☒ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☒ Yes ☐ No

c. Ground three: *Plea bargain can not be upheld if all relevant facts are not (first) provided to defendant/petition PRIOR to his entering into a plea agreement*

(1) Supporting FACTS: *Petitioner states that had he known the sentence (itself) could not be lawfully imposed - he would not have entered into a plea agreement for the time. Petitioner concludes that he would not have relied on defense counsel's advice. Petitioner states that in order to make an intelligent and informed decision he must be provided with all facts and truths with regards to the sentence itself.*

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☒ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☒ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☒ Yes ☐ No

d. Ground four: ______________________________

(1) Supporting FACTS: ______________________________

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

e. Ground five: ______________________________

(1) Supporting FACTS: ______________________________

(2) Did you raise this claim on direct appeal to the California Court of Appeal? ☐ Yes ☐ No

(3) Did you raise this claim in a Petition for Review to the California Supreme Court? ☐ Yes ☐ No

(4) Did you raise this claim in a habeas petition to the California Supreme Court? ☐ Yes ☐ No

8. If any of the grounds listed in paragraph 7 were not previously presented to the California Supreme Court, state briefly which grounds were not presented, and give your reasons: ______

9. Have you previously filed any habeas petitions in any federal court with respect to this judgment of conviction?

☐ Yes ☒ No

If so, give the following information for each such petition *(use additional pages if necessary, and attach copies of the petitions and the rulings on the petitions if available)*:

a. (1) Name of court: ______

(2) Case number: ______

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: ______

(4) Grounds raised *(list each)*:

(a) ______

(b) ______

(c) ______

(d) ______

(e) ______

(f) ______

(5) Date of decision: ______

(6) Result ______

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

b. (1) Name of court: ______

(2) Case number: ______

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: ______

(4) Grounds raised *(list each)*:

(a) ______

(b) ______

(c) ______

(d) ______

(e) ______

(f) ______

(5) Date of decision: ______

(6) Result ______

(7) Was an evidentiary hearing held? ☐ Yes ☐ No

10. Do you have any petitions now pending (i.e., filed but not yet decided) in any state or federal court with respect to this judgment of conviction? ☐ Yes ☒ No

If so, give the following information *(and attach a copy of the petition if available)*:

(1) Name of court: ______

(2) Case number: ______

(3) Date filed *(or if mailed, the date the petition was turned over to the prison authorities for mailing)*: ______

(4) Grounds raised *(list each)*:

(a) ______

(b) ______

(c) ______

(d) ______

(e) ______

(f) ______

11. Are you presently represented by counsel? ☐ Yes ☒ No

If so, provide name, address and telephone number: ______

WHEREFORE, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding,

/s/ EDWARD R. SULLIVAN, Petitioner in Pro Se

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on 10/27/2007
Date

[signature]
Signature of Petitioner

EDWARD REYNIR SULLIVAN
K32127 308-25L
Post Office Box 3535
Norco, CA 92860-0991

Petitioner in Pro Se

United States District Court

Central District of California / Eastern Division

EDWARD REYNIR SULLIVAN, Petitioner,	)	CASE NO: ____________________
vs.	)	**PETITION UNDER 28 USC §2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**
MATTHEW MARTELL, Warden, Respondent.	)	MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PETITION

Comes now is **EDWARD REYNIR SULLIVAN,** Petitioner, in the above entitled matter who makes this Petition for Writ of Habeas Corpus (by a State prisoner) to challenge California's determining sentencing law (hereinafter referred to as "DSL") which does not authorized the judge, but **only** a jury, to find facts exposing Petitioner to an elevated upper base term sentence and/or imposing enhancements in direct violation with California Penal Code § 1170(a)(3); the United States Supreme Court's ruling in ***Apprendi v. New Jersey***, 530 U.S. 466, 490; 120 S.Ct. 2348; 147 L.Ed.2d 435; and thus in violation of the Petitioner's Sixth and Fourteenth Amendment United States Constitutional rights.

Petitioner contends that at all times mentioned herein, he is being restrained of his freedom and liberty and held illegally by the Respondents (and each of them); as the Petitioner contends that the imposed sentence (itself) is unlawful and illegal; as the sentencing court has no authority (itself) to impose said enhancements.

Petitioner filed this petition with the Superior Court of the State of California, County of San Diego, (Case Number HC 15786 / SDC 117298 - 3rd Petition) for which the Honorable Judge David J. Danielsen denied said petition without the benefit of a hearing. Petitioner also states that the Court of Appeals also denied his petition without benefit of hearing.

On October 17, 2007, the California Supreme Court denied petitioner's Writ of Habeas Corpus; thus concluding his State remedies. See attached Exhibit 'A'. Petitioner sates that the reasoning provided for denying the petition is without serious merit and review by the United States District Court is obvious to correct the ruling of the lower court.

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-II-

At all times mentioned herein, Petitioner is (and has been) under the jurisdiction of the Respondents and pursuant to the findings of the Superior Court, State of California, County of San Diego following the findings of **GUILT in a judge trial** and subsequent sentencing which resulted in a total prison term of fifteen (15) years in California State Prison.

Petitioner states that there has not been a recent CHANGES in any California sentencing laws; nor has the U.S. Supreme Court changes it's position on this subject. Petitioner states that the State of California (and in particular the Superior Courts therein) have **FAILED TO COME INTO COMPLIANCE**

-PARTIES-

-III-

EDWARD REYNIR SULLIVAN is the Petitioner in the above-entitled matter. Petitioner states that he is incarcerated under the jurisdiction of the Director of the California Department of Corrections & Rehabilitation (CDCR) at the California Rehabilitation Center (CRC) located in the City of Norco, County of Riverside, California. Petitioner is proceeding in Pro Per.

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-IV-

Petitioner states that the Secretary of the CDCR is a politically appointed position under the direct control of the Governor of the State of California and confirmed by the California State Legislature. Petitioner states that the current Secretary of CDCR is JIM TILTON and he (alone) is responsible for the overall operations of CDCR.

Petitioner states that Respondent **MATTHEW MARTELL** is the "Warden" of CRC and reports to the Director of CDCR. Petitioner states that Respondent **MARTELL** is legally responsible for his current and continued incarceration to The People of the State of California (the Real Party at Interest) pursuant to a direct court order.

Petitioner contends that his present and continued incarceration is both unlawful and illegal based (solely) on the ruling of the United States Supreme Court in ***CUNNINGHAM v. CALIFORNIA***, 2007 WL 135687 (U.S. Cal.) (Only the Westlaw citation is currently available); decided on January 22, 2007.

The Respondents (and each of them) are duly represented (as a matter of law) by the California State Attorney General's Office.

-STATEMENT OF FACTS-

-V-

Petitioner was originally arrested in 1995 for "strong arm robbery". Petitioner states that he was subsequently released on bail for those charges and so remained until approximately May 12, 1996.

Petitioner states that during his subsequent re-arrest and incarceration, additional charges were filed against him for a "burglary". Petitioner states that a judge trial was held and he was found guilty/convicted of: California Penal Code §459 (and specifically "Burglary 1st Degree"); California Penal Code §496(a) (and specifically "Receiving Stolen Property"); California Penal Code §12022.1 (and specifically "Enhancement for Offense Committed while on Bail") and an enhancement pursuant to California Penal Code §667(a), and as indicated in ***People of the State of California V. EDWARD REYNIR SULLIVAN***, San Diego Superior Court Case # (SCD 117298).

Petitioner states that the G. Peterson, Deputy Public Defender, County of San Diego, CA, represented him. Petitioner states that in order to make an intelligent and informed decision, he must (first) be provided with all the known and available information with regard to the law.

Petitioner DENIES that this was done or that he was informed of the law. As a matter of fact, the Petitioner "trusted and believed" that the sentence was lawful and otherwise legal and the sentencing court in a position to **impose an enhancement him under the DSL**. Petitioner DENIES that this was done or that he was in formed as to the statutory maximum sentence that could be imposed under CPC § 12022 and/or § 667(a).

Petitioner states that he is merely a layman to the law and does not profess to know all the laws associated with court matters. Petitioner contends that relevant facts and information were withheld from him; and he continues to be denied his Sixth Amendment Constitutional right.

Petitioner states that the Honorable Judge Laura P. Hammes sentenced him to a term of four (4) years (middle base term), **doubled** to eight (8) years; Enhanced him pursuant to CPC §12022.1 two (2) additional years; and Enhanced (for prior prison terms) him pursuant to CPC § 667(a) five (5) additional years for a total prison term of fifteen (15) years; as each count was ordered served consecutively.

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Petitioner contends that the **maximum** the judge could impose under law was **four (4) years**; (and questions the sentencing court's authority to double the middle term for the "Burglary", doubled to eight years; as the offense was said to be committed while Petitioner was released on bail).

Petitioner states that he was sentenced on or about October 10, 1996 and subsequently delivered to the CDCR Reception Center for processing. Petitioner states that he remains in custody pursuant to that case and has an Earliest Possible Release Date (EPRD) of June 11, 2008; at which time he will be released from custody to parole pursuant to California Penal Code (CPC) § 3000. Petitioner states that he will be release on parole to San Diego County.

Petitioner filed this petition with the Superior Court of the State of California, County of San Diego, (Case Number HC 15786 / SDC 117298 - 3rd Petition) for which the Honorable Judge David J. Danielsen denied said petition without the benefit of a hearing. Petitioner states that the Court of Appeals (Fourth Appellate District - Division One) also denied his petition.

Petitioner states that the California Supreme Court has (also) denied his Petition for Writ of Habeas Corpus (with benefit of hearing) and failed to render any opinion as to the merits of petitioner's claims. See attached Exhibit 'A'.

Petitioner states that the reasoning provided for denying the petition is without serious merit and review by the Supreme Court is obvious to correct the ruling of the lower court.

First and probably foremost, petitioner presents but two questions:

(1) If the Determinant Sentencing Law (DSL) is without flaw (and otherwise legally valid in 1996 when the petitioner was sentenced) or survives (intact) a review under the Sixth Amendment, why is the California Legislature, at the request of California State Attorney General's Office and following the Court's ruling in Cunningham, currently reviewing the DSL as it has been operational since 1977? and

(2) If the DSL does not survive review under the Sixth Amendment, is the petitioner (then) allowed to ask that an impartial panel of judges to determine the lawfulness as review his sentence presented herein?

Petitioner contends that regardless to the statements of the Honorable Judge Danielsen, and Justice McConnell, with regards to applicability of "retroactive" law, issues regarding a sentence can be addressed at any time; although a petition should be filed as soon as possible after discovery of the error, habeas corpus relief for an illegal sentence may be granted many years after the imposition of the original sentence. **In re Ward** (1966) 64 Cal.2d 672, 675.

Further petitioner contends that if a sentence is illegal, such as when the term exceeds that authorized by law or is based on a miscalculation of credits or misinterpretation of a statue, the trial court has imposed an illegal sentence and the sentence may be corrected at any time. **People v. Jack** (1989) 213 Cal.App.3d 913. **In re Massengale** (1970) 10 Cal.App.3d 689, 693.

Petitioner states that there appears to be the possibility that courts may have to review criminal cases dating as far back as 1977 (in inception of DSL) due to ***Cunningham***. That's not to conclude that the U.S. Supreme Court changed the law. *Cunningham* enforced the previous decisions of various lower courts and reviews of the U.S. Supreme Court.

The State of California, it would appear, has consistently fallen short in terms of compliance with those rulings and as a result has suffered (directly) the ruling in *Cunningham*.

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The U.S. Supreme Court has repeatedly held that, under the Sixth Amendment,

> "***any* fact that exposes a defendant to a greater potential sentence must be found by a jury, not a judge, and established beyond a reasonable doubt, not merely a preponderance of the evidence.**" "While this rule is rooted in longstanding common-law practice, its explicit statement in our decision is recent." Cunningham v. California, 2007 WL 135687 (U.S.Cal) at page 8. In **Jones v. United States** (1999) 526 U.S. 227, "We examined the Sixth Amendment's historical and doctrinal foundations, and recognized that judicial fact-finding operating to increase a defendant's otherwise maximum punishment posed a grave constitutional question. Id., at 239-252. "While the court construed the statue at issue to avoid the question, the Jones opinion presaged our decision, some 15 months later, in **Apprendi v. New Jersey** (2000) 530 U.S. 466. And in Apprendi we held "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt."

Petitioner contends that that does not dismiss "enhancements tied to specific counts" or more commonly referred to as enhancements pursuant to CPC 12022, et seq, or the California Three Strikes Law. In *Cunningham* (Id., at page 8) the court noted,

> "It is surprising, then, that State's counsel, at oral argument, acknowledged that he knew of no case in which a California trial judge had gone beyond the middle term based not on any fact the judge found, solely on the bases of a policy or subjective belief." See TR. Of Oral Arg. 49-50.

The U.S. Supreme Court (in *Cunningham*) stated that California's DSL does not resemble the advisory system that *Booker* court had in view. Under California's system, judges are not free to exercise their discretion to select a specific sentence within a defined range. Booker, 543 U.S., at 233.

California's Legislature has adopted sentencing triads, three fixed sentences with no range between them. *Cunningham's* sentencing judge had no discretion to select a sentence within a range of 6 to 16 years. His instruction was to select 12 years, nothing less, and nothing more.

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Petitioner states that unlike aggravating circumstances, statutory enhancements must be charged in the indictment, and the underlying facts must be proved to the jury beyond a reasonable doubt. CPC §1170.1(e); *Black*, 35 Cal.4th, at 1257.

A fact underlying an enhancement cannot do double duty; it cannot be used to impose an upper term sentence, and on top of that, an enhanced term. CPC §1170(b).

Petitioner states that, "If the Guidelines as currently written could be read as merely advisory provisions that recommended, rather than required, the selection of particular sentences in response to differing sets of facts, their use would not implicate the Sixth Amendment. We have never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range." *Cunningham*, Id., at page 11. Petitioner states that the "Guidelines" expressed herein are that of the Federal system.

Petitioner states that his petition does not question the authority of the judge, under existing law, to impose an enhancement for his prior prison terms (only).

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What is certainly being questioned is the authority of the judge to double the imposed term based on a prior strike conviction (exposing the petitioner to an elevated term) solely and absent the finding by a jury under CPC §1170.1(e) and/or §1170(b); A fact underlying an enhancement cannot do double duty.

As previously stated, the U.S. Supreme Court has held that such is not lawful. California law (CPC §1170(b) and §1170.1(e)) only supports that conclusion.

With regards to the Honorable Danielsen's claim that this is post-Cunningham or Apprendi and therefore not applicable in the instant matter, the petitioner respectfully disagrees. It would appear obvious, based on the several cases cited herein that even 20 years later (the point of discovery of an illegal sentence) habeas corpus relief can still be granted if the sentence is deemed illegal.

-VI-

Petitioner states that he has previously addressed the issue of his sentence on *indirect appeal* and through the Habeas Corpus process. Refer to ***In Re EDWARD REYNIR SULLIVAN*** on Habeas Corpus (Case No. HC 15786).

Petitioner state that said petition was **DENIED** by San Diego County Superior Court (Judge Timothy R. Walsh) . Petitioner further states that said the California Court of Appeals/4th Appellate District on or about July 31, 1997 DENIED previous petition. Petitioner states he did not seek a review by the California Supreme Court on his petition.

Petitioner contends that the "reason" for denial is not relevant as the court's position obviously differs from that of current U.S. Supreme court rulings on law.

Nonetheless, it was the petitioner's position then, as is now, that the sentence imposed (regardless to it being a judge trial) is both illegal and unlawful under the DSL scheme and addressed by the U.S. Supreme Court in ***CUNNINGHAM,*** supra., and must be corrected to conform to the both State and Federal laws.

Petitioner contends that based on the Court's findings in *CUNNINGHAM,* supra, the sentencing court imposed an illegal sentence under CPC §§ 667.5(b) and 1170.12 (a) through (d); and petitioner states that giving him the upper base term (itself) is in direct violation of the Sixth Amendment; as no jury determined circumstances of aggravation and petitioner denies having admitted them.

-JURISDICTION-

-Administrative Remedies-

-VII-

Petitioner states that the Respondents (and each of them) have an Administrative Appeal process; however Petitioner DENIES that said process is the proper venue to address the matter being presented before this Honorable Court and contained within this Habeas Corpus.

Petitioner states that his petition does not contain any issues, which address (1) conditions of confinement or (2) other claims for which there are "administrative remedies". ***In Re MUSZALSKI*** (1975) 52 Cal.App.3d 500, 125 Cal.Rptr. 286. Petitioner states that only a court of the land can correct errors in sentencing.

-Indirect Appeals-

-VIII-

Petitioner states that he has previously addressed the issue of his sentence on ***indirect appeal*** and through the Habeas Corpus process. Refer to ***In Re EDWARD REYNIR SULLIVAN*** on Habeas Corpus.

Petitioner state that said petition was **DENIED** by San Diego County Superior Court and Court of Appeals. Petitioner states that he did not seek review by the California State Supreme Court on his petition.

Petitioner states that only with the U.S. Supreme Court's ruling in *CUNNINGHAM* is this Petition valid and within the reasonable discovery of claimed grounds; as the Superior Court of San Diego County and the California Court of Appeals (both) **DENIED** the previous petition's without serious review and consideration. ***In Re SWAIN*** (1949) 34 Cal.2d 300, 304.

Petitioner DENIES having any other petitions, appeals, or other matter pending before **any** court and states that this *IS* the COURT OF NEXT IMPRESSION.

-CONTENTIONS-

-IX-

California's Determinate Sentencing Law (DSL), which authorizes the judge, not the jury, to find facts by a preponderance of the evidence exposing a defendant to an elevated upper term sentence violates a defendants right to trail by jury. U.S.C.A. Const.Amend. 6, 14

Petitioner states that "except for a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted **to a jury and proved beyond a reasonable doubt"** in order to satisfy the petitioner's constitutional rights under the Sixth and Fourteenth Amendment of (both State and) Federal Constitution(s). ***CUNNINGHAM v. CALIFORNIA***, 2007 WL 135687 (U.S.Cal.).

Petitioner contends under existing law, the DSL obliged the trial judge to sentence him to the 4-year middle term unless the judge found one or more additional "circumstances in aggravation". Petitioner states that Court Rules adopted to implement DSL define "circumstances in aggravation" as facts that justify the upper term. Those facts, the Rules provide must be established by a preponderance of the evidence.

Petitioner states that the judge failed to firmly establish that fact; nor was those facts found by a jury trial as required by law.

Petitioner states that "based on a post-trial sentencing hearing, the judge found by a preponderance of the evidence six aggravating facts, including the particular vulnerability of the victim, and one mitigating fact that *CUNNINGHAM* had no record of prior criminal conduct. Concluding that the aggravators outweighed the sole mitigator, the judge sentenced *CUNNINGHAM* to the upper term of 16 years." *CUNNINGHAM,* Id. at Page 2. Emphasis added.

Petitioner states that the California Court of Appeal affirmed and the State Supreme Court DENIED review, but in a decision published nine days earlier, ***PEOPLE v. BLACK,*** 35 Cal.4th 1230, 1113 P.3d 534, that court HELD that the DSL survived Sixth Amendment inspection.

Specifically, Petitioner contends that that Court held: "The DSL, by placing sentence-elevating factfinding within the judge's province, violations a defendant's right to trial by jury safeguarded by the Sixth and Fourteenth Amendments". *People v. Black, Id.* @ Pp…….8-22. **Petitioner contends that the doubling of the middle term (from 4 to 8 years) fall within the review of the court as it (also) elevates the lawful term that the sentencing court could impose.**

Petitioner states that the U.S. Supreme Court in *Apprendi* held that "**under the Sixth Amendment, any fact (other than a prior conviction) that exposes a defendant to a sentence in excess of the relevant statutory maximum must be found by a jury, not a judge, and established beyond a reasonable doubt, not merely by a preponderance of evidence**. See 530 U.S. 466, 490; 120 S.Ct. 2348, 147 L.Ed.2d 435. (Emphasis and underscoring added).

Petitioner states that in two (2) other relevant cases, ***BLAKELY v. WASHINGTON,*** 542 U.S. 296; 124 S.Ct. 2531; 159 L.Ed.2d 403 and ***UNITED STATES v. BOOKER***, 543 U.S. 220,125 S.Ct. 738; 160 L.Ed.2d 621, are central to this petition and the U.S. Supreme Court's current position as outlined herein. Petitioner states that in all material respects, California's DSL ***resembles the sentencing systems invalidated*** in both *BLAKELY* and *BOOKER*.

Petitioner states that following the reasoning in those cases, "the middle term prescribed under California law, not the upper term, **is the relevant statutory maximum**. Because aggravating facts that authorize the upper term are found by the judge, and need only be established by a preponderance of the evidence, the DSL violates the rule of *Apprendi*". *CUNNINGHAM*, Id. at Page 3.

Petitioner states that "While 'that should be the end of the matter', *BLAKELY*, Id. at Page 313, in *PEOPLE* v. *BLACK*, the California Supreme Court insisted that the DSL survives the inspection under our precedents.

The *Black* court reasoned that, given the ample discretion afforded trial judges to identify aggravating facts warranting an upper term sentence, the DSL did "not represent a legislative effort to shift the proof of particular facts from elements of a crime (to be proved by a jury) to sentencing factors (to be decided by a judge)." 35 Cal.4th, at 1255-1256; 29 Cal.Rptr.3d 740; 113 P3d, at 543-544. "This Court cautioned in *BLAKELY*, however, *that broad discretion to decide what fact may support an enhanced sentence, or to determine whether an enhanced sentence is warranted in a particular case, does not shield a sentencing system from the force of this Court's decision*." Citing *CUNNINGHAM* v *CALIFORNIA* (Id.) at Page 4. Emphasis and underscoring added.

Petitioner NOTES that the ***BLACK*** court also urged that the DSL is not cause for concern because it reduced the penalties for most crimes over the prior indeterminate sentencing scheme; because the system is fair to defendant; and because the DSL requires statutory sentence enhancements (as distinguished from aggravators) to be charged in the indictment and **proved to a jury beyond a reasonable doubt.**

Petitioner contends that ultimately, the *BLACK* court relied on an equation of California's DSL to the post-*BOOKER* federal system. That attempted comparison is unavailing. The *BOOKER* court held that the Federal Guidelines incompatible with the Sixth Amendment because there were **"mandatory and impose[d] binding requirements on all sentencing judges"**, 543 U.S. at 233. To remedy the *constitutional* infirmity, the Court exercised provisions that rendered the system mandatory, leaving the Guidelines in place "as advisory only".

Petitioner contends (however) that the California DSL **does not** resemble the "advisory system" the Court in *BOOKER* had in view. Under California's system, the petitioner contends that "judges are not free to exercise their discretion to select a specific sentence within a defined range" Id. Petitioner states that the California Legislature has adopted sentencing triads, three fixed sentences with **no ranges** between them.

CUNNINGHAM'S sentencing judge **had no discretion to select a sentence range of 6 to 16 years**, but had to impose 12 years, ***nothing less and nothing more***, unless the judge found facts allowing a sentence of 6 or 16 years. Factfinding to elevate the sentence from 12 to 16 years, this Court's decision make plain, falls within the province of the jury employing a "**beyond a reasonable doubt**" standard, not the bailiwick of a judge determining where the preponderance of the evidence lies." *CUNNINGHAM (Id.) at Page 4.* Emphasis and underscoring *added.*

Petitioner states that the Court position (based on the facts) in *Cunningham* is as follows:

"**Because the DSL allocates to judges sole authority to find facts permitting the imposition of an upper term sentence, the system violates the Sixth Amendment**". Cunningham (Id.) at Page 4. Underscoring and emphasis added.

(c) As to the adjustment of California sentencing system in light of the Court's ruling, "[t]he ball….lies in [California's] court." *BOOKER,* 543 U.S. at 265. Several States have modified their systems in the wake of *Apprendi* and *Blakely* to retain determinate sentencing, by calling upon the jury to find any fact necessary to the imposition of an elevated sentence. Other States have chosen to permit judges genuinely "to exercise broad discretion … within a statutory range," which, "everyone agrees, " encounters no Sixth Amendments shoal. *Id., at 233.* California may follow the paths taken by its sister States or otherwise alter its system, so long as it observes Sixth Amendment limitations declared in this Court's decision. Pp --- - --- 21-22." *Citing Cunningham (Id. at Page 4).*

Petitioner states that the Court's findings in CUNNINGHAM included "[T]he relevant 'statutory maximum', " this Court has clarified, **"is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose *without* any additional findings."** *BLAKELY,* 542 U.S. at 303-304 (emphasis in original).

Petitioner states that the Court's findings in *CUNNINGHAM* concluded, **"We reverse that disposition because the four-year elevation based on judicial factfinding denied petitioner his right to a jury trial…."** *Id., @ Page 5.*

Petitioner contends that based on his lack of a **JURY** trial "the middle term shall be selected" as "circumstances in aggravation, as crispy defined by the Judicial Council means facts which justify the imposition of the upper prison term." Rule 4.405(a) and (b).

Petitioner DENIES that it was ever established by a preponderance of the evidence of that it was stated orally on the record. Rule 4.420(e). Petitioner further states, "A fact that is an element of the crime shall not be used to impose an upper term." Rule 4.420(d).

Petitioner states that in sum, California's DSL, and the rules governing its application, direct the sentencing court to start with the middle term and to move from that term **only** when the court itself finds and places on the record facts - whether related to the offense or the offender - beyond the elements of the charged offense. *CUNNINGHAM, Id., at Page* 7. And See **PEOPLE v. HALL** (1994) 8 Cal.4th 950, 957; 35 Cal.Rptr.2d 432; 883 P.2d 978, "*Selection of the upper term is justified only if circumstances in aggravation are established by a preponderance of evidence…*" (Emphasis added). See also, e.g., Rule 4.420(b) "***Selection of the upper term is justified only if, after a consideration of all relevant facts, the circumstances in aggravation outweigh the circumstances of mitigation.***" (Emphasis added). Rule 4.420(e).

Court must provide "a concise statement of the ultimate facts that the court deemed to constitute circumstances in aggravation or mitigation." (Emphasis added).

In *CUNNINGHAM*, Petitioner contends, "this Court has repeatedly held that, under the Sixth Amendment, any fact that exposes a defendant to a greater potential sentence **must be found by a jury, not a judge**, and established beyond a reasonable doubt, not merely by a preponderance of the evidence. Petitioner further contends, "While this rule is rooted in longstanding common-law practice, its explicit statement in our decisions is recent."

In **JONES v. UNITED STATES** (1999) 526 U.S. 227; 119 S.Ct. 1215, the Court examined the Sixth Amendment's historical and doctrinal foundations and recognized the judicial factfinding operating to increase a defendant's otherwise maximum punishment posed a grave constitutional question. *Id., at Page 239-252.*

Petitioner states that in *APPRENDI,* Charles Apprendi was convicted of possession of a firearm for any unlawful purpose, a second-degree offense under New Jersey law punishable by five to ten years' imprisonment. *Id., at Page 468.*

A separate "hate crime" statute authorized an "extended term" of imprisonment: Ten to Twenty years could be imposed if the trial judge found, by a preponderance of the evidence that "'[t] he defendant in committing the crime acted with a purpose to intimidate an individual or group of individuals because of race, color, gender, handicap, religion, sexual orientation or ethnicity.'" Id., at 468-469. The judge in *APPRENDI's* case so found, and therefore sentenced the defendant to 12 years imprisonment. This Court held that the Sixth Amendment **proscribed the enhanced sentence.** 530 U.S. at 471. Other than a ***prior conviction,*** see **ALMENDAREZ-TORRES v. UNITED STATES** (1998) 523 U.S. 224, 239-247; 118 S.Ct. 1219; 140 L.Ed.2d 350, we held in *Apprendi*:

> "Any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."

530 U.S. at 490. See also **HARRIS v. UNITED STATES** (2002) 536 U.S. 545, 557-566; 122 S.Ct. 2406; 153 L.Ed.2d 524 (plurality opinion) ("*APPRENDI* said that any fact extending the defendant's sentence beyond the maximum authorized by the jury's verdict would have been considered an element of an aggravated crime - and thus the domain of the jury - by those who framed the Bill of Rights.").

Petitioner states that applying the rule of *APPRENDI*, the Court held *BLAKELY's* sentence **"unconstitutional"**. The State in *BLAKELY* had endeavored to distinguish *APPRENDI* on the ground that "[u] nder the Washington guidelines, an exceptional sentence is within the court's discretion as a result of a guilty verdict."

The court rejected the argument indicating that the judge could not have sentenced *BLAKELY* above the range without finding the additional fact of deliberate cruelty. Consequently, that fact was subject to the Sixth Amendment's jury-trial guarantee. 542 U.S. at 304-314. It did not matter, the court explained, that *BLAKELY's* sentence, though outside the standard range, was within the 10-year maximum for class B felonies:

> "Our precedents make clear … that the 'statutory maximum' for *Apprendi* purposes is the maximum sentence a judge may impose **solely on the basis of the facts reflected in the jury verdict or admitted by the defendant** … In other words, the relevant 'statutory maximum' is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose **without** any additional findings. When a judge inflicts punishment that the jury's verdict alone does not allow, the jury has not found all the facts 'which the law makes essential to the punishment' … and the judge **exceeds his proper authority.**" Id., at Page 303. (Emphasis in original) (Quoting J. Bishop, Criminal Procedure § 87, p.55 (2d ed. 1872)). *CUNNINGHAM,* supra at Page 10.

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Petitioner Contends that the Sentencing Court Judge Exceeded His Authority in Imposing "Enhancements" against Him

Petitioner contends that the sentencing court/judge had no lawful jurisdiction (alone or even considering his plea bargain) to impose additional time based on any enhancements.

Petitioner indicates that the State had additionally argued in *BLAKELY* that *APPRENDI's* rule was satisfied because Washington's Reform Act did not specify an exclusive catalog of potential facts on which a judge might base a departure from the standard range.

The Court **rejected** that argument as well:

> "Whether the judge's authority to impose **an enhanced sentence** depends on finding a specified fact … one of several specified facts … or any aggravating fact (as here)," we observed, "it remains the case that the jury's verdict alone does not authorize the sentence." 542 U.S. at 305 (emphasis in original). Further, they held it irrelevant that the Reform Act ultimately left the decision whether or not to depart to the judge's discretion: "Whether the judicially determined facts require a sentence enhancement or merely allow it," they noted "the verdict alone does not authorize the sentence." *Ibid. n.8* (emphasis in original).

Petitioner contends that if the guidelines (as currently written) could be read as merely "advisory" provisions that recommended **rather than required**, the selection of particular sentences in response to differing sets of facts, their use would not implicate the Sixth Amendment.

Petitioner states that the constitutional issues presented by the *CUNNINGHAM* case would have been avoided entirely if Congress had omitted from the (Federal Sentencing Reform Act) provisions that make the Guidelines binding on district judges.... For when a trial judge exercises his discretion to select a specific sentence within a defined range, the defendant has no right to jury determination of the fact that the judge deems relevant. "The Guidelines as written, however, **are not advisory**; they are **mandatory and binding** on all judges." *Ibid.* (Citations omitted).

Petitioner states that pursuant to *CUNNINGHAM* under California's DSL, an upper term may be imposed **only** when the trial judge finds an aggravating circumstance. *See supra at 4-5.* An element of the charged offense, essential to the jury's determination of guilt, or admitted in a defendant's guilty plea, **does not qualify as such a circumstance**. *See supra, at 5-6.*

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Instead, aggravating circumstances depend on facts **found discretely and solely** by the judge. In accord with *BLAKELY*, therefore, the middle term prescribed in California's statues, not the upper term is the relevant statutory maximum. 542 U.S. at 303.

> "[T] he 'statutory maximum' for *Apprendi* purposes is the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant."* (Emphasis in original). Because of the circumstance in aggravation are found by the judge, not the jury, and need only be established by a preponderance of the evidence, not beyond a reasonable doubt, *see supra, at 5*, the DSL violates *Apprendi's* bright-line rule: Except for a prior conviction, **"any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."** 530 U.S. at 490.

The United States Supreme Court cautioned in *BLAKELY*, however, that broad discretion to decide what facts may support an enhanced sentence, or to determine whether an enhanced sentence is warranted in any particular case, does not shield a sentencing system from the source of their decisions.

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If the jury's verdict alone does not authorize the sentence, if, instead, the judge must find an additional fact to impose the longer term, Sixth Amendment requirement **is not satisfied**. (Emphasis added). *BLAKELY, 542 U.S. at 305, and n.8.*

"The *BLACK* court additionally noted that the DSL requires statutory enhancements (as distinguished from aggravators) - e.g., the use of firearm or other dangerous weapon, infliction of great bodily injury, Penal Code §§ 12022, 12022.7-8 (West 2000 and Supp.2006) - to be charged in the indictment and proved to a jury beyond a reasonable doubt." 35 Cal.4th at 1257. The Court in *Cunningham* concluded, "Our decisions, however, leave no room for such examinations.

The Court found that California's DSL does not resemble the advisory system the *BOOKER* Court had in view. Under California's system, judges are not free to exercise their discretion to select a specific sentence within a defined range. *Booker, 543 U.S. at 233.* California Legislature has adopted sentencing triads, three fixed sentences with no ranges between them.

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CUNNINGHAM's sentencing judge had no discretion to select a sentence within a range of 6 to 16 years. His instruction was to select 12 years, nothing less and nothing more, unless he found facts allowing the imposition of a sentence of 6 **or** 16 years, our decisions make plain, falls within the province of the jury employing a beyond-a-reasonable-doubt standard, not the bailiwick of a judge determining where the preponderance of the evidence lies. *Cunningham, supra, at Page 14.*

Petitioner contends that the doubling of the middle term (from 4 to 8 years) fall within the review of the court as it (also) elevates the lawful term that the sentencing court could impose.

Lastly, petitioner states: "reasonableness, however, is not, as the *BLACK* court would have it, the touchstone of the Sixth Amendment analysis. The reasonableness requirement *BOOKER* anticipated for the federal system operates within the Sixth Amendment constraints delineated in our precedent, not as a substitute for those constraints. Because DSL allocates to judges sole authority to find facts permitting the imposition of an upper term sentence, the system **violates the Sixth Amendment.**

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It is comforting, but beside the point, that California's system requires judge-determined DSL sentences to be reasonable. *BOOKER's* remedy for the Federal Guidelines, in short, is not a recipe for rendering our Sixth Amendment case law toothless." *Cunningham, supra at Page 14.*

Petitioner states that contrary to the *BLACK* court's holding, the Court decisions from *Apprendi* to *Booker* point to the middle term specified in California statues, not the upper term, as the relevant statutory maximum. "Because DSL authorizes the judges, not the jury, to find facts permitting an upper term sentence, the system **cannot withstand measurement against our Sixth Amendment precedent.**" *Cunningham, supra at Page 15.*

The Court (in *Cunningham*) concludes by stating:

> "As to the adjustment of California's sentencing system in light of our decision, '[T] he ball … lies in [California's] court.' *BOOKER, 543 U.S. at 265; cf. supra at Page 15.* "We note that several States have modified their systems in the wake of *Apprendi* and *Blakely* to retain determinate sentencing.

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They have done so by calling upon the jury - either at trial or in separate sentencing proceeding - to find any fact necessary to the imposition of an elevated sentence. As earlier noted, California already employs juries in this manner to determine statutory sentencing enhancements. See *supra, at Page* 7, *18*.

Other States have chosen to permit judges genuinely 'to exercise broad discretion … within a statutory range,' which 'everyone agrees,' encounters no Sixth Amendment shoal. *BOOKER, 543 U.S. at 233*. "California may follow the paths taken by its sister States or **otherwise alter its system,** so long as the State **observes** Sixth Amendment limitations declared in this Court's decision. Supra, at Page 15.

-XI-

-CONCLUSION-

"***That should be the end of the matter.***" *BLAKELY*, 542 U.S. at 313. Petitioner states that the position of the United States Supreme Court should be clear on this matter. *CUNNINGHAM, APPRENDI, BOOKER, and BLAKELY* should be sufficient case law for everyone to agree.

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Petitioner states that based on the holdings of the various courts (as outlined herein), it seems all too apparent that he has (in fact) suffered Constitutional violations with regards to both the Sixth and Fourteenth Amendments; as due process and equal rights mandates simply cannot be ignored or merely overlooked.

Petitioner states that (now) only a court of the land can correct the situation and he seeks to accomplish that.

Petitioner contends that the doubling of the middle term (from 4 to 8 years) fall within the review of the court as it (also) elevates the lawful term that the sentencing court could impose.

Petitioner contends that based on the Court's findings in *CUNNINGHAM*, supra, the sentencing court imposed an illegal sentence under CPC §§ 667.5(b) and 1170.12 (a) through (d); and petitioner states that giving him the upper base term (itself) is in direct violation of the Sixth Amendment; as no jury determined circumstances of aggravation and petitioner denies having admitted them.

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Petitioner will not conclude that the acts committed herein to be intentional; but concedes that it is at least (now) obvious that the imposition of his sentence is unlawful as described herein. For the above stated reasons, the relief sought in the petition should be granted.

Again, petitioner presents but two questions: (1) If the Determinant Sentencing Law (DSL) is without flaw (and otherwise legally valid in 1996 when the petitioner was sentenced) or survives (intact) a review under the Sixth Amendment, why is the California Legislature, at the request of California State Attorney General's Office and following the Court's ruling in Cunningham, currently reviewing the DSL as it has been operational since 1977? (2) If the DSL does not survive review under the Sixth Amendment, is the petitioner (then) allowed to ask that an impartial panel of judges to determine the lawfulness as review his sentence presented herein?

Petitioner contends that regardless to the statements of the Honorable Judge Danielsen, with regards to applicability of "retroactive" law, issues regarding a sentence can be addressed at any time; although a petition should be filed as soon as possible after discovery of the error, habeas corpus relief for an illegal sentence may be granted many years after the imposition of the original sentence. **In re Ward** (1966) 64 Cal.2d 672, 675.

Further petitioner contends that if a sentence is illegal, such as when the term exceeds that authorized by law or is based on a miscalculation of credits or misinterpretation of a statue, the trial court has imposed an illegal sentence and the sentence may be corrected at any time. **People v. Jack** (1989) 213 Cal.App.3d 913. **In re Massengale** (1970) 10 Cal.App.3d 689, 693.

Petitioner states that there appears to be the possibility that courts may have to review criminal cases dating as far back as 1977 (in inception of DSL) due to ***Cunningham***. That's not to conclude that the U.S. Supreme Court changed the law. *Cunningham* enforced the previous decisions of various lower courts and reviews of the U.S. Supreme Court. The State of California, it would appear, has consistently fallen short in terms of compliance with those rulings and as a result has suffered (directly) the ruling in *Cunningham*.

The U.S. Supreme Court has repeatedly held that, under the Sixth Amendment, "***any fact that exposes a defendant to a greater potential sentence must be found by a jury, not a judge, and established beyond a reasonable doubt, not merely a preponderance of the evidence.***"

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"While this rule is rooted in longstanding common-law practice, its explicit statement in our decision is recent." Cunningham v. California, 2007 WL 135687 (U.S.Cal) at page 8.

In **Jones v. United States** (1999) 526 U.S. 227, "We examined the Sixth Amendment's historical and doctrinal foundations, and recognized that judicial fact-finding operating to increase a defendant's otherwise maximum punishment posed a grave constitutional question. Id., at 239-252.

"While the court construed the statue at issue to avoid the question, the Jones opinion presaged our decision, some 15 months later, in **Apprendi v. New Jersey** (2000) 530 U.S. 466. And in Apprendi we held "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt."

Petitioner contends that that does not dismiss "enhancements tied to specific counts" or more commonly referred to as enhancements pursuant to CPC 12022, et seq, or the California Three Strikes Law.

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In *Cunningham* (Id., at page 8) the court noted, "It is surprising, then, that State's counsel, at oral argument, acknowledged that he knew of no case in which a California trial judge had gone beyond the middle term based not on any fact the judge found, solely on the bases of a policy or subjective belief." See TR. Of Oral Arg. 49-50.

The U.S. Supreme Court (in *Cunningham*) stated that California's DSL does not resemble the advisory system that *Booker* court had in view. Under California's system, judges are not free to exercise their discretion to select a specific sentence within a defined range. Booker, 543 U.S., at 233.

California's Legislature has adopted sentencing triads, three fixed sentences with no range between them. *Cunningham's* sentencing judge had no discretion to select a sentence within a range of 6 to 16 years. His instruction was to select 12 years, nothing less, and nothing more.

Petitioner states that unlike aggravating circumstances, statutory enhancements must be charged in the indictment, and the underlying facts must be proved to the jury beyond a reasonable doubt. CPC §1170.1(e); *Black*, 35 Cal.4th, at 1257.

A fact underlying an enhancement cannot do double duty; it cannot be used to impose an upper term sentence, and on top of that, an enhanced term. CPC §1170(b).

Petitioner states that, "If the Guidelines as currently written could be read as merely advisory provisions that recommended, rather than required, the selection of particular sentences in response to differing sets of facts, their use would not implicate the Sixth Amendment. We have never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range." *Cunningham*, Id., at page 11. Petitioner states that the "Guidelines" expressed herein are that of the Federal system.

Petitioner states that his petition does not question the authority of the judge, under existing law, to impose an enhancement for his prior prison terms (only).

What is certainly being questioned is the authority of the judge to double the imposed term based on a prior strike conviction (exposing the petitioner to an elevated term) solely and absent the finding by a jury under CPC §1170.1(e) and/or §1170(b); A fact underlying an enhancement cannot do double duty. As previously stated, the U.S. Supreme Court has held that such is not lawful. California law (CPC §1170(b) and §1170.1(e)) only supports that conclusion.

With regards to the Honorable Danielsen's claim that this is post-Cunningham or Apprendi (and noting the comment of P.J. McCONNELL, with regards to *Blakely*) and therefore not applicable in the instant matter, the petitioner respectfully disagrees.

It would appear obvious, based on the several cases cited herein that even 20 years later (the point of discovery of an illegal sentence) habeas corpus relief can still be granted if the sentence is deemed illegal.

Petitioner states that if the court had sentenced him correctly, he would have already been released from custody. Petitioner states that he has contended (all along) that the sentence (itself) violated applicable laws in full force and effect at the time of his original sentence. Cunningham only enforces what he has said all along.

Based on this simple fact, petitioner would ask that this court take judicial note of that fact; and consider granting him release (on appeal bond) pending review by this honorable court. Petitioner contends that his release date should have been in 2000. More than seven (7) years later, petitioner remains in custody.

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-XII-

-PRAYER-

Petitioner is without remedies save by Writ of Habeas Corpus.

WHEREFORE, petitioner prays the Court:

1). Issue a Writ of Habeas Corpus;

2). Declare the Rights of the parties;

3). Issue an Order to Show Cause;

4). Order Petitioner re-sentenced in accordance with this petition;

5). Grant Release (Appeal Bond) Pending Adjudication of this petition;

6). Appoint Counsel to represent Petition/Petitioner at bench; or award reasonable attorney fees; and

7). Grant any other and further relief as the Court deems just and proper.

Dated: **October 27, 2007**

Respectfully Submitted,

12/22/07

EDWARD REYNIR SULLIVAN
Petitioner in Pro Per

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION
312 North Spring Street, Room G-8 Los Angeles, CA 90012
Tel: (213) 894-7984

SOUTHERN DIVISION
411 West Fourth Street, Suite 1053
Santa Ana, CA 92701-4516
(714) 338-4570

EASTERN DIVISION
3470 Twelfth Street, Room 134
Riverside, CA 92501
(951) 328-4450

SHERRI R. CARTER
District Court Executive
and Clerk of Court

Monday, January 14, 2008

EDWARD R. SULLIVAN, K-32127
C.R.C./ 308-25L
P.O. BOX 3535
NORCO, CA 92860

Dear Sir/Madam:

A [X] Petition for Writ of Habeas Corpus was filed today on your behalf and assigned civil case number CV08- 210 JFW (E)

A [ ] Motion pursuant to Title 28, United States Code, Section 2255, was filed today in criminal case number and also assigned the civil case number

Please refer to these case numbers in all future communications.

Please Address all correspondence to the attention of the Courtroom Deputy for:

[ ] District Court Judge ______________________

[X] Magistrate Judge **Charles Eick**

at the following address:

[X] U.S. District Court
312 N. Spring Street
Civil Section, Room G-8
Los Angeles, CA 90012

[ ] Ronald Reagan Federal
Building and U.S. Courthouse
411 West Fourth St., Suite 1053
Santa Ana, CA 92701-4516
(714) 338-4750

[ ] U.S. District Court
3470 Twelfth Street
Room 134
Riverside, CA 92501

The Court must be notified within fifteen (15) days of any address change. If mail directed to your address of record is returned undelivered by the Post Office, and if the Court and opposing counsel are not notified in writing within fifteen (15) days thereafter of your current address, the Court may dismiss the case with or without prejudice for want of prosecution.

Very truly yours,

Clerk, U.S. District Court

By: LHORN
Deputy Clerk

FILED
CLERK, U.S. DISTRICT COURT
JAN 14 2008
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

856

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EDWARD REYNIR SULLIVAN PLAINTIFF(S) v. **MATTHEW MARTELL, WARDEN** DEFENDANT(S)	CASE NUMBER **CV08- 210 JFW (E)**
	NOTICE OF REFERENCE TO A UNITED STATES MAGISTRATE JUDGE (Petition for Writ of Habeas Corpus)

Pursuant to General Order 07-02, the within action has been assigned to the calendar of the Honorable John F. Walter, U.S. District Judge. Pursuant to General Order 05-07, the within action is referred to U.S. Magistrate Judge Charles Eick, who is authorized to consider preliminary matters and conduct all further hearings as may be appropriate or necessary. Thereafter, unless the Magistrate Judge determines that an evidentiary hearing is required, the Magistrate Judge shall prepare a report and recommendation and file it with the Clerk of the Court which may include proposed findings of fact and conclusions of law where necessary or appropriate, and may include a proposed written order or judgment, which shall be mailed to the parties for objections.

Pleadings and all other matters to be called to the Magistrate Judge's attention shall be formally submitted through the Clerk of the Court.

The Court must be notified within fifteen (15) days of any address change. If mail directed by the clerk to your address of record is returned undelivered by the Post Office, and if the Court and opposing counsel are not notified in writing within fifteen (15) days thereafter of your current address, the Court may dismiss the petition with or without prejudice for want of prosecution.

Clerk, U.S. District Court

January 14, 2008
Date

By LHORN
Deputy Clerk

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EDWARD REYNIR SULLIVAN, Petitioner, v. MATTHEW MARTELL, Warden, Respondent.	NO. CV 08-210-JFW (E) ORDER REQUIRING ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

Based on the Petition filed herein:

IT IS HEREBY ORDERED that Respondent file an Answer to the Petition within twenty-three (23) days of the date of this Order.

IT IS FURTHER ORDERED that, if Petitioner desires to file a Reply to the Answer, Petitioner shall do so within fifteen (15) days of the date that the Answer is filed.

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IT IS FURTHER ORDERED that the Clerk of this Court shall forthwith serve a copy of the Petition and this Order upon the Attorney General of the State of California, counsel for Respondent, and the Clerk shall serve a copy of this Order upon the Petitioner.

DATED: January 16, 2008.

/S/
CHARLES F. EICK
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EDWARD REYNIR SULLIVAN, Petitioner, v. MATTHEW MARTELL, Warden, Respondent.	NO. CV 08-210-JFW (E) ORDER

IT IS ORDERED that Petitioner shall serve upon Respondent or, if appearance has been entered by counsel, upon Respondent's attorneys, a copy of every future pleading or other document submitted for consideration by the Court. Petitioner shall include with the original paper to be filed with the Clerk of the Court a certificate stating the date that a true and correct copy of the paper was mailed to Respondent or Respondent's counsel. Any paper received by a District Judge or Magistrate Judge which has not been filed with the Clerk or which fails to include a certificate of service will be disregarded by the Court.

DATED: January 16, 2008.

/S/
CHARLES F. EICK
UNITED STATES MAGISTRATE JUDGE

EDMUND G. BROWN JR.
Attorney General of the State of California
DANE R. GILLETTE
Chief Assistant Attorney General
GARY W. SCHONS
Senior Assistant Attorney General
DOUGLAS DANZIG
Deputy Attorney General
MATTHEW MULFORD
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State Bar No. 184000
110 West A Street, Suite 1100
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P.O. Box 85266
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Telephone: (619) 645-2227
Fax: (619) 645-2271
Email: Matthew.Mulford@doj.ca.gov

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EDWARD REYNIR SULLIVAN, **Petitioner,** **v.** **MATTHEW MARTELL, Warden,** **Respondent.**	CV 08-210-JFW (E) **NOTICE OF APPEARANCE**

The California Attorney General, counsel for Warden Martell, hereby files this Notice of Appearance to inform the Court of assigned counsel for Respondent in this proceeding.

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Respondent hereby notifies the Court that the attorney with principal charge of the case is as follows:

Matthew Mulford. Deputy Attorney General
110 West A Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2227
E-mail: Matthew.Mulford@doj.ca.gov

Dated: February 8, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

DANE R. GILLETTE
Chief Assistant Attorney General

GARY W. SCHONS
Senior Assistant Attorney General

DOUGLAS DANZIG
Deputy Attorney General

/s/Matthew Mulford

MATTHEW MULFORD
Deputy Attorney General

Attorneys for Respondent

SD2008700047
80205648.wpd

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Sullivan v. Martell**

No.: **CV 08-210-JFW (E)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On February 8, 2008, I served the attached **NOTICE OF APPEARANCE** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Edward Reynir Sullivan
CDC# K-32127
California Rehabilitation Center
308-25L
P.O. Box 3535
Norco, CA 92860
In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 8, 2008, at San Diego, California.

Helen A. Jellen	Helen A. Jellen
Declarant	Signature

70114384.wpd

Case 2:08-cv-00210-JFW-E Document 6 Filed 02/08/2008 Page 1 of 3

EDMUND G. BROWN JR.
Attorney General of the State of California
DANE R. GILLETTE
Chief Assistant Attorney General
GARY W. SCHONS
Senior Assistant Attorney General
DOUGLAS DANZIG
Deputy Attorney General
MATTHEW MULFORD
Deputy Attorney General
State Bar No. 184000
110 West A Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2227
Fax: (619) 645-2271
Email: Matthew.Mulford@doj.ca.gov

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EDWARD REYNIR SULLIVAN, Petitioner, v. MATTHEW MARTELL, Warden, Respondent.	CV 08-210-JFW (E) **NOTICE OF MOTION AND MOTION TO TRANSFER PETITION FOR WRIT OF HABEAS CORPUS DUE TO IMPROPER VENUE** (No Hearing Required)

To Petitioner Edward Reynir Sullivan:

PLEASE TAKE NOTICE that Respondent, Warden Matthew Martell, hereby moves this Court for an order transferring the Petition for Writ of Habeas Corpus, under Central District Rule 83-17.5(a), because Sullivan was convicted in San Diego County, which is located in the Southern District of California.

This motion is based on this Notice of Motion and Motion, and the accompanying Memorandum of Points and Authorities.

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WHEREFORE, Respondent respectfully requests the Petition be transferred to the Southern District of California.

Dated: February 8, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

DANE R. GILLETTE
Chief Assistant Attorney General

GARY W. SCHONS
Senior Assistant Attorney General

DOUGLAS DANZIG
Deputy Attorney General

/s/ Matthew Mulford

MATTHEW MULFORD
Deputy Attorney General

Attorneys for Respondent

SD2008700047
80205657.wpd

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Sullivan v. Martell**

No.: **CV 08-210-JFW (E)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On February 8, 2008, I served the attached **NOTICE OF MOTION AND MOTION TO TRANSFER PETITION FOR WRIT OF HABEAS CORPUS DUE TO IMPROPER VENUE** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Edward Reynir Sullivan
CDC# K-32127
California Rehabilitation Center
308-25L
P.O. Box 3535
Norco, CA 92860
In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 8, 2008, at San Diego, California.

Helen A. Jellen	Helen A. Jellen
Declarant	Signature

70114393.wpd

EDMUND G. BROWN JR.
Attorney General of the State of California
DANE R. GILLETTE
Chief Assistant Attorney General
GARY W. SCHONS
Senior Assistant Attorney General
DOUGLAS DANZIG
Deputy Attorney General
MATTHEW MULFORD
Deputy Attorney General
State Bar No. 184000
110 West A Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2227
Fax: (619) 645-2271
Email: Matthew.Mulford@doj.ca.gov

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EDWARD REYNIR SULLIVAN, Petitioner, v. MATTHEW MARTELL, Warden, Respondent.	CV 08-210-JFW (E) **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO TRANSFER**

Petitioner Sullivan filed his habeas petition requesting relief under 28 U.S.C. § 2254, in this Court on January 14, 2008. According to Sullivan's Petition, he is currently incarcerated due to his conviction in San Diego County Superior Court, case number SDC117298. (Pet. at 2 of 10, ¶2(c).) He challenges a conviction for which he is serving a fifteen-year sentence for burglary and receiving stolen property, which were committed while he was on bail for another offense, and which includes prior conviction allegations. (Pet. at 2 of 10, ¶¶2(b), 2(e).)

/ / /

DISCUSSION

Venue for a habeas corpus action is proper either in the district of confinement or the district of conviction. 28 U.S.C. § 2241(d). By Local Rule, however, this Court has adopted a policy of transferring habeas matters to the district in which the petitioner was convicted, rather than in which the petitioner is presently confined. C.D. Cal R. 83-17.5.

Although Sullivan alleges that he is currently confined in the California Rehabilitation Center, Norco (Pet. at 1 of 10), he admits he was convicted in San Diego County, which is within the Southern District of California.

Accordingly, and although this Court has jurisdiction, it should transfer this matter to the Southern District of California. Otherwise, if Sullivan's place of confinement were to change to a prison located outside of the Central District, this Court would lose jurisdiction.

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CONCLUSION

Respondent respectfully asks the Court to transfer venue to the United States District Court for the Southern District of California, the district within which Sullivan was convicted.

Dated: February 8, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California
DANE R. GILLETTE
Chief Assistant Attorney General
GARY W. SCHONS
Senior Assistant Attorney General
DOUGLAS DANZIG
Deputy Attorney General

/s/ Matthew Mulford

MATTHEW MULFORD
Deputy Attorney General
Attorneys for Respondent

SD2008700047
80205658.wpd

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Sullivan v. Martell**

No.: **CV 08-210-JFW (E)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On February 8, 2008, I served the attached **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO TRANSFER** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Edward Reynir Sullivan
CDC# K-32127
California Rehabilitation Center
308-25L
P.O. Box 3535
Norco, CA 92860
In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 8, 2008, at San Diego, California.

Helen A. Jellen
Declarant

Helen A. Jellen
Signature

70114397.wpd

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Edward Reynir Sullivan, PLAINTIFF(S) v. Matthew Martell, Warden DEFENDANT(S).	CASE NUMBER CV 08-00210 JFW (E)
	NOTICE TO FILER OF DEFICIENCIES IN ELECTRONICALLY FILED DOCUMENTS

PLEASE TAKE NOTICE:

Pursuant to General Order 07-08, Local Rule 5-4 and/or the Federal Rules of Civil Procedure, the following deficiency(ies) has been found with your electronically filed document:

Date Filed	Doc. No.	Title of Doc.
2/8/2008	5	Notice of Appearance

ERRORS WITH DOCUMENT

- ☐ Document submitted in the wrong case
- ☑ Incorrect document is attached to the docket entry
- ☐ Document linked incorrectly to the wrong document/docket entry
- ☑ Incorrect event selected. Correct event is Appearance; Correct category is Notice
- ☐ Case number is incorrect or missing.
- ☐ Hearing information is missing, incorrect, or not timely
- ☐ Local Rule 7.1-1 No Certification of Interested Parties and/or no copies
- ☐ Case is closed
- ☐ Proposed Document was not submitted as separate attachment
- ☐ Title page is missing
- ☐ Local Rule 56-1 Statement of uncontroverted facts and/or proposed judgment lacking
- ☐ Local Rule 56-2 Statement of genuine issues of material fact lacking
- ☐ Local Rule 7-19.1 Notice to other parties of ex parte application lacking
- ☐ Local Rule 11-6 Memorandum/brief exceeds 25 pages
- ☐ Local Rule 11-8 Memorandum/brief exceeding 10 pages shall contain table of contents
- ☑ Other The docket entry is Notice of Motion and Motion for Leave to Appear; however, the document attached is NOTICE OF APPEARANCE.

Note: In response to this notice the court may order 1) an amended or correct document to be filed 2) the document stricken or 3) take other action as the court deems appropriate.

Clerk, U.S. District Court

Dated: 2/8/2008

By: P. Clarke
Deputy Clerk

cc: Assigned District Judge and/or Magistrate Judge

EDMUND G. BROWN JR.
Attorney General of the State of California
DANE R. GILLETTE
Chief Assistant Attorney General
GARY W. SCHONS
Senior Assistant Attorney General
DOUGLAS DANZIG
Deputy Attorney General
MATTHEW MULFORD
Deputy Attorney General
State Bar No. 184000
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P.O. Box 85266
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Telephone: (619) 645-2227
Fax: (619) 645-2271
Email: Matthew.Mulford@doj.ca.gov

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EDWARD REYNIR SULLIVAN, **Petitioner,** **v.** **MATTHEW MARTELL, Warden,** **Respondent.**	CV 08-210-JFW (E) **NOTICE OF APPEARANCE**

The California Attorney General, counsel for Warden Martell, hereby files this Notice of Appearance to inform the Court of assigned counsel for Respondent in this proceeding.

///

///

///

///

///

Respondent hereby notifies the Court that the attorney with principal charge of the case is as follows:

Matthew Mulford. Deputy Attorney General
110 West A Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2227
E-mail: Matthew.Mulford@doj.ca.gov

Dated: February 8, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

DANE R. GILLETTE
Chief Assistant Attorney General

GARY W. SCHONS
Senior Assistant Attorney General

DOUGLAS DANZIG
Deputy Attorney General

/s/Matthew Mulford

MATTHEW MULFORD
Deputy Attorney General

Attorneys for Respondent

SD2008700047
80205648.wpd

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Sullivan v. Martell**

No.: **CV 08-210-JFW (E)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On February 8, 2008, I served the attached **NOTICE OF APPEARANCE** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Edward Reynir Sullivan
CDC# K-32127
California Rehabilitation Center
308-25L
P.O. Box 3535
Norco, CA 92860
In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 8, 2008, at San Diego, California.

Helen A. Jellen — Declarant

Helen A. Jellen — Signature

70114384.wpd

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES-GENERAL

Case No. CV 08-210-JFW (E) **Date:** February 12, 2008

Title: EDWARD REYNIR SULLIVAN v. MATTHEW MARTELL, Warden

DOCKET ENTRY

PRESENT:

HON. CHARLES F. EICK, JUDGE

STACEY PIERSON	N/A
DEPUTY CLERK	**COURT REPORTER**

ATTORNEYS PRESENT FOR PLAINTIFFS:	**ATTORNEYS PRESENT FOR DEFENDANTS:**
None	None

PROCEEDINGS: (IN CHAMBERS)

On February 8, 2008, Respondent filed a "Motion to Transfer Petition for Writ of Habeas Corpus Due to Improper Venue" ("Motion"). Petitioner shall have leave to file a Response to the Motion within twenty (20) days of the date of this Order. Thereafter the Court will take the matter under submission.

cc: Judge Walter
Petitioner
Counsel for Respondent

Initials of Deputy Clerk SP

Edward Reynir Sullivan
CDCR #K32127 313-24L
Post Office Box 3535
Norco, CA 92860-0991

Petitioner in Pro Se

Original

FILED
CLERK, U.S. DISTRICT COURT
FEB 21 2008
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

In The United States District Court

For The Central District of California

EDWARD REYNIR SULLIVAN, Petitioner, v. MATTHEW MARTELL, Warden, Respondent.	Case No: CV 08-210-JFW (E) NOTICE OF OBJECTION TO REQUEST FOR TRANSFER BY RESPONDENT

Respondent, Matthew Martell, via assigned counsel from the Office of the Attorney General, State of California, and specifically, Matthew Mulford, has filed a request with this honorable court requesting that this matter be transferred to the Southern District Court of California. The authority cited by the Respondent simply that this Court has "adopted a policy" of transferring habeas matters to the district in which the petitioner was convicted, rather than in which the petitioner is presently confined.

It appears obvious by 28 U.S.C. §2241(d) that proper venue for habeas corpus action is either in the district of confinement or the district of conviction. It also appears obvious that this court has elected to hear this matter based on previously submitted orders. The Respondent does not cite any specific reason(s) for transfer that this court should give this matter serious consideration.

Petitioner objects to the transfer of this matter. There is no logical reason(s) presented by the Respondent for any such transfer and the Office of the Attorney General is well situated to handle this matter regardless to which court it may be filed in. Additionally, petitioner states that counsel has been assigned by the Senior Assistant Attorney General and any change of venue at this time could result in a change in assigned Deputy Attorney General's; thereby presenting an opportunity for any newly assigned counsel to seek additional time to file a response.

Petitioner states that considering all factors, this Honorable Court is the correct and proper venue to address this matter and as such, should not arbitrarily transfer it to the Southern District without more specific cause being presented and the petitioner is seeking this court to retain its current jurisdiction over this matter.

Accordingly, petitioner respectfully request that this court DENY the Respondent's request for transfer venue to the United States District Court for the Southern District of California, and that said jurisdiction be retained based on the county of confinement. Petitioner would also ask that this Honorable Court hold the Respondent to the previously due date to the Order to Show Cause thus denying any request for continuance.

Dated: February 16, 2008

Respectfully submitted,

EDWARD R. SULLIVAN
Petitioner in Pro Se

DECLARATION OF SERVICE MY UNITED STATES MAIL

I, Greggory Johnson, declare the following:

I am 18 years of age or older and not a party to this matter. I am readily familiar with the business practice at the California Rehabilitation Center for the collection and processing of legal correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the California Rehabilitation Center is deposited with the United States Postal service that following business day in the ordinary course of business.

On February 17, 2008, I served that attached NOTICE OF OBJECTION TO REQUEST FOR TRANSFER BY RESPONDENT by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the California Rehabilitation Center at 5th & Western Avenues, Post Office Box 3535, Norco, CA 92860, addressed as follows:

Edmund G. Brown, Jr
Attorney General State of California
110 West A Street / Suite 1100
Post Office Box 85266
San Diego, CA 92101
Attn: Matthew Mulford, Deputy Attorney General

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on February 17, 2008, at Norco, California.

Declarant

JS44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

FILED
MAR - 3 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY KM DEPUTY

2254 ✓ 1983
FILING FEE PAID
Yes___ No ✓
IFP MOTION FILED
Yes___ No ✓
COPIES SENT TO
Court ✓ ProSe___

I (a) PLAINTIFFS

Edward Reynir Sullivan

DEFENDANTS

Matthew Martell

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Riverside
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Edward Reynir Sullivan
PO Box 3535
Norco, CA 92860
K-32127

ATTORNEYS (IF KNOWN)

'08 CV 0406 BEN AJB

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT (For Diversity Cases Only)

	PT	DEF		PT	DEF
Citizen of This State	☐1	☐1	Incorporated or Principal Place of Business in This State	☐4	☐4
Citizen of Another State	☐2	☐2	Incorporated and Principal Place of Business in Another State	☐5	☐5
Citizen or Subject of a Foreign Country	☐3	☐3	Foreign Nation	☐6	☐6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ Marine
- ☐ Miller Act
- ☐ Negotiable Instrument
- ☐ 150 Recovery of Overpayment &Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153Recovery of Overpayment of Veterans Benefits
- ☐ 160 Stockholders Suits
- ☐ Other Contract
- ☐ 195 Contract Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Eiectmant
- ☐ 240 Tort to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury- Medical Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence Habeas Corpus
- ☒ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC881
- ☐ 630 Liquor Laws
- ☐ 640 RR & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710Fair Labor Standards Act
- 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc.
- ☐ Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (13958)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS - Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reappointment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities Exchange
- ☐ 875 Customer Challenge 12 USC
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State
- ☐ 890 Other Statutory Actions

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- Original Proceeding
- ☐ 2 Removal from State Court
- ☐ 3 Remanded from Appelate Court
- ☐ 4 Reinstated or Reopened
- ☒ 5 Transferred from another district (specify) CENTRAL CA
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 DEMAND $

Check YES only if demanded in complaint:
JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Docket Number

DATE 3/3/2008

~~SIGNATURE OF ATTORNEY OF RECORD~~

[signature]